

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ASSOCIATED INDUSTRIES INSURANCE
COMPANY, INC.

Case No.
Hon.

Plaintiff,

v

PLAKA RESTAURANT, LLC, SIDNEY
O'DONNELL, ROSS O'DONNELL, D&L
SECURITY SOLUTIONS, LLC, and LACEY
POLLARD,

Defendants.

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A civil action involving parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in Wayne County Circuit Court. The action is entitled *Sidney O'Donnell and Ross O'Donnell v Plaka Restaurant, LLC, D&L Security Solutions, LLC and Lacey Pollard*, Civil Action Number 21-013910-NO and assigned to Judge Annette J. Berry.

DECLARATORY COMPLAINT

DEMAND FOR JURY TRIAL

NOW COMES the plaintiff, ASSOCIATED INDUSTRIES INSURANCE COMPANY, INC., by and through its attorneys, HARVEY KRUSE, P.C., and for its declaratory complaint states as follows:

1. The plaintiff, Associated Industries Insurance Company, Inc. (“Associated Industries Insurance”) is incorporated in the State of Florida with its principal place of business located in Boca Raton, Florida, and which conducts business in Wayne County, Michigan.

2. The defendant, Plaka Restaurant, LLC (“Plaka Restaurant”) is a Michigan limited liability company with its principal place of business located in Wayne County, Michigan, and which conducts business in Wayne County, Michigan.

3. The defendant, Sidney O’Donnell, is a resident of Oakland County, Michigan.

4. The defendant, Ross O’Donnell, is a resident of Oakland County, Michigan.

5. The defendant, D&L Security Solutions, LLC, is a Michigan limited liability company with its principal place of business located in Wayne County, Michigan.

6. The defendant, Lacey Pollard, is a resident of Wayne County, Michigan.

7. The amount in controversy is in excess of \$75,000, exclusive of interest and costs.

8. There is jurisdiction in the U.S. District Court pursuant to 28 USC §1332(a) because this case involves a controversy between citizens of different states, the plaintiff is incorporated in the State of Florida, with its principal place of business located in Boca Raton, Florida, and the defendants are Michigan limited liability companies with their principal place of business located in Michigan, the individual defendants are residents of the State of Michigan, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

9. This is a claim for declaratory relief brought by the plaintiff, Associated Industries Insurance, to determine that it has no duty to provide insurance coverage or a defense to the defendant Plaka Restaurant, LLC for any claims made against it in the underlying action filed by Sidney O'Donnell and Ross O'Donnell v the Plaka Restaurant, LLC d/b/a Level Two, D&L Security Solutions, LLC and Lacey Pollard, Wayne County Circuit Court, State of Michigan, Civil Action No. 21-013910-NO, (hereinafter referred to as the "underlying action" and a copy of the First Amended Complaint in the underlying action is attached hereto as Exhibit 1).

10. Associated Industries Insurance issued a Commercial General Liability Policy to Plaka Restaurant, LLC, 535 Monroe St., Detroit, MI 48226,

policy number AES1205232 00 with a policy period from 12/13/2020 to 12/13/2021, hereinafter referred to as the "Associated Industries Insurance Policy."

(A copy of the policy is attached hereto as Exhibit 2).

COUNT I – ASSOCIATED INDUSTRIES INSURANCE POLICY

22. The plaintiff hereby repeats and realleges all of the allegations contained in all of the other paragraphs of this declaratory complaint as though set forth fully herein.

23. The Associated Industries Insurance Policy provides the following Insuring Agreement for Coverage A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of

judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and

. . . . (Ex 2, p 1 of 15)

24. The Associated Industries Insurance Policy contains the following Insuring Agreement for Coverage B PERSONAL AND ADVERTISING INJURY LIABILITY:

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period. (Ex 2, p 5 of 15)

25. The Associated Industries Insurance Policy contains the following definitions:

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **II** – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** – Definitions.

....

The Declarations of the policy lists the Named Insured and Address:

Plaka Restaurant, LLC
The Greek and Level Two
535 Monroe St.
Detroit, MI 48226

SECTION II – WHO IS AN INSURED

- 1. If you are designated in the Declarations as:

....

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

....

- 2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other

than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

SECTION V – DEFINITIONS

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

5. "Employee" includes a "leased worker." "Employee" does not include a "temporary worker."

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of

duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you. (Ex 2, p 1, 8, 9, 12, 15 of 15)

26. The Associated Industries Insurance Policy contains the following exclusions for Coverage A:

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

....

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury." (Ex 2, p 2, 5 of 15)

27. The Associated industries Insurance Policy contains the following exclusions for Coverage B:

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

....

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured. (Ex 2, p 5-6 of 15).

28. The Associated Industries Insurance Policy contains the following

EXCLUSION – PUNITIVE DAMAGES Endorsement:

The following Exclusion is added to **SECTION I – COVERAGES**, paragraph 2. **Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, paragraph 2 **Exclusions of COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY** AND TO **section I – liquor liability coverage** paragraph 2. **Exclusions:**

1. Exclusions

This insurance does not apply to:

Punitive Damages

Any claim of or indemnification for punitive or exemplary damages. If a “suit” seeking both compensatory and punitive or exemplary damages has been brought against you for a claim covered by this policy, we will provide defense for such action. We will not have any obligation to pay for any costs, interest or damages attributable to punitive or exemplary damages. (Ex 2, EXCLUSION – PUNITIVE DAMAGES Endorsement).

29. The Associated Industries Insurance Policy contains the following

EXCLUSION – ASSAULT AND BATTERY Endorsement:

A. The following Exclusion is added to **SECTION I – COVERAGES**, paragraph 2. **Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, paragraph 2. **Exclusions of COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY:**

2. Exclusions

Notwithstanding any other provision of this policy, this insurance does not apply to:

Assault and Battery

Any claim or “suit” for "bodily injury," "property damage," or "personal and advertising injury" arising out of, in whole or in part, any assault, battery, fight, altercation, misconduct or similar incident or act of violence, whether caused by or at the instigation of, or at the direction of

the insured, his/her employees, customers, patrons, guests or any cause whatsoever, including, but not limited to claims of negligent or improper hiring practices, negligent, improper or non-existent supervision of employees, patrons, or guests and negligence in failing to protect customers, patrons or guests. As used above, “assault” and “battery” include sexual assault and/or sexual battery.

We shall have no obligation to defend you, or any other insured, for any such loss, claim or suit. (Ex 2, EXCLUSION – ASSAULT AND BATTERY Endorsement).

30. The Associated Industries Insurance Policy pursuant to the STANDARD ADDITIONAL EXCLUSIONS Endorsement 3. EXCLUSION - DUTY TO DEFEND:

SECTION I – COVERAGES, Paragraph 2. Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, and Paragraph 2. Exclusions of COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY are amended to add the following:

Where there is no coverage under this policy, there is no duty to defend. (Ex 2, STANDARD ADDITIONAL EXCLUSIONS ENDORSEMENT)

31. Associated Industries Insurance has no duty to provide coverage or a defense to Plaka Restaurant, LLC or any other party for any of the claims made in the underlying action pursuant to the Associated Industries Insurance Policy for the following reasons:

- a. There has been no fortuitous event.
- b. There has been no “occurrence” as defined by the policy.
- c. There has been no “Personal and Advertising Injury” to which the insurance applies.

d. Even if there was coverage, any and all coverage and a duty to defend is excluded by all of the above-cited exclusions.

WHEREFORE, plaintiff, Associated Industries Insurance Company, prays for judgment that it has no duty to provide coverage or a defense to Plaka Restaurant, LLC or any other party for any and all allegations and claims made against them in the underlying action and that it is entitled to its costs and attorneys fees for having to file this action.

Respectfully submitted,

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BY: /s/Michael F. Schmidt

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DATED: March 23, 2022

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DEMAND FOR JURY TRIAL

NOW COMES plaintiff, ASSOCIATED INDUSTRIE INSURANCE COMPANY, INC., by and through its attorneys, HARVEY KRUSE, P.C., and hereby demands a trial by jury.

HARVEY KRUSE, P.C.

BY: /s/Michael F. Schmidt

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